Opinion of the United States District Court, Eastern District of New York in *Dwen* v. *Barry*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

71 C 1020

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

—against—

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

MEMORANDUM OF DECISION AND ORDER

May 30, 1974

In November, 1971, this court denied a preliminary injunction and dismissed a civil rights action brought by the plaintiff. The United States Court of Appeals for the Second Circuit, by order dated August 22, 1973, reversed this court's dismissal of the complaint and remanded the case for trial on the issue of whether the state had "... some legitimate state interest reasonably requiring the restriction on the individual." 483 F.2d 1126, 1130 (2d Cir. 1973). The appellate court held that the defendant had "... the burden of establishing a genuine public need for the regulation." 483 F.2d at 1131.

The regulations concerning grooming standards (originally numbered 2/75.0 to 2/75.5 of the rules and regulations of the Police Department, County of Suffolk, New York, dated July 19, 1971, effective August 1, 1971) have been modified and renumbered.[1] The complaint was amended to challenge the grooming standards set forth in Rule 2/2.16 as modified and in effect since November 15, 1973.

Defendant suggested that the grooming regulations serve the dual purpose of safety and morale. Defendant's sole witness was Deputy Commissioner Robert C. Rapp. Commissioner Rapp has been the Deputy Police Commissioner since July 21, 1973 and prior to that served as both a patrolman and a sergeant on the New York City police force and as an assistant district attorney of Suffolk County.

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[1] The regulations concerning hair, sideburns and mustaches are now numbered 2/2.16 subdivisions A, B and C. The regulations concerning beards, goatees and wigs are now subdivisions D and E of 2/2.16. As modified the grooming standards effective November 15, 1973 read as follows:

2/2.16 Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

B. If a member chooses to wear sideburns, they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2" in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

C. A neatly trimmed mustache may be worn.

Commissioner Rapp testified that long hair presents a safety problem to an officer attempting to make an arrest by placing that officer in a position of being thrown off balance by an offender. The Commissioner demonstrated that a downward force applied to the head through the grasp of "superfluous" hair and transmitted to the forearm in contact with the police officer's back could result in an embarrassing and potentially dangerous upending. The demonstration, favored by a bountiful head of hair supplied by the official court reporter on duty, served to illustrate that pony tails present a hazard to law enforcement officers and are a proper subject for regulation. The remainder of 2/2.16A, however, bears no relationship to safety but rather relates to hair styling.[2] The potential danger in hairdress is the ability of the offender to grip the hair and hold the fate of the police officer in his hand. Bulk and length of the hair is not regulated except as it interferes with "the proper wear of any authorized headgear." Thus the regulation would permit bulky and lengthy hair on the top of the head, thereby presenting the very problem that was demonstrated. In the remaining subdivisions, sideburns, mustaches and wigs are regulated and beards are barred. No proof was offered to support any claim of the need for the protection of the police officer in the pertinent regulations.

The high morale of police personnel is a matter of grave concern to the department. Proper grooming is an ingredient of the esprit de corps of a good law enforcement organization. The self-esteem generated in the individual and the respect commanded from the public it serves pro-

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[2] The purpose of Section 2/2.16A is stated in the first sentence:

"Hair will be neat, clean, trimmed, and present a groomed appearance." The remainder of the subdivision relates to specific standards of good grooming.

motes the efficiency of the organization's work. However, with the exception of the general requirement that hair, sideburns and mustaches be neatly trimmed, the regulations do not provide standards for proper grooming. Rather, the standards do nothing more than demand uniformity. Uniformity for uniformity's sake does not establish a public need.[3] Defendant offered no proof that beards, goatees, hair styles that extend below the ears or collar, or sideburns that extend below the lowest part of the ear or beyond 2" in width and do not end with a clean-shaven horizontal line affect the morale of the members of the police department or earn the disrespect of the public.

Defendant failed to establish a legitimate state interest requiring these restrictions on the members of the police department. Rule 2/2.16 including its subdivisions is an arbitrary limitation and a purposeless restraint. As such, it is violative of the Due Process Clause of the Fourteenth Amendment and therefore unconstitutional.[4]

Judgment is granted in favor of the plaintiff and against the defendant declaring Section 2/2.16 of the rules and procedures of the Suffolk County Police Department unconstitutional, void and of no effect and permanently enjoining the defendant from enforcing Section 2/2.16.

Settle judgment in accordance with this memorandum of opinion on two days service (five days by regular mail).

JACOB MISHLER
U.S.D.J.

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[3] Commissioner Rapp testified that uniformity was required for identification. It would appear, however, that the uniform (issued by the department) supplies the necessary identification for police work.

[4] Section 2/2.16 fixes grooming standards for male members only. The court does not reach the equal protection claim of the Fourteenth Amendment.